

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of	)	
<b>CONSUMERS ENERGY COMPANY</b>	)	Case No. U-14031
for approval of a resource conservation plan.	)	
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At the August 18, 2004 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

PRESENT: Hon. J. Peter Lark, Chair  
Hon. Robert B. Nelson, Commissioner  
Hon. Laura Chappelle, Commissioner

**ORDER ADOPTING NEW SCHEDULE**

On February 13, 2004, Consumers Energy Company (Consumers) filed an application for approval of a resource conservation plan, which included a request to change the cost recovery methodology the Commission adopted with respect to the power supplied to Consumers by the Midland Cogeneration Venture Limited Partnership. At a prehearing conference held on April 13, 2004, Administrative Law Judge Barbara A. Stump (ALJ) denied intervention to Adrian Energy Associates, L.L.C., Cadillac Renewable Energy L.L.C. (Cadillac), Genesee Power Station Limited Partnership (Genesee), Grayling Generating Station Limited Partnership (Grayling), Hillman Power Company L.L.C., T.E.S. Filer City Station Limited Partnership (T.E.S.), Viking Energy of Lincoln, Inc. (Viking-Lincoln), Viking Energy of McBain, Inc. (Viking-McBain), and Ada Cogeneration Limited Partnership (collectively, the Qualifying Facilities (QFs)) and the Michigan Independent Power Producers Association, finding that these entities did not have standing

because they did not meet the two-prong test<sup>1</sup> for intervention. On July 22, 2004, the Commission affirmed the ALJ's ruling.

Several of the QFs brought an action before the Ingham County Circuit Court to challenge the Commission's July 22, 2004 order.<sup>2</sup> In an order issued on August 11, 2004 in Case No. 04-1071-AA, Ingham County Circuit Court Judge Paula J. M. Manderfield stayed the proceedings currently pending before the Commission in Case No. U-14031 until further order of that court.

Because issuance of the Ingham County Circuit Court's order indefinitely delays progress on a matter that the Commission is persuaded should be resolved as expeditiously as possible, the Commission finds that it should exercise its discretion and allow Cadillac, Genesee, Grayling, T.E.S., Viking-Lincoln, and Viking-McBain to participate as intervenors in this proceeding. Toward that end, the Commission directs the ALJ to conduct a prehearing conference in this matter at 9:00 a.m. on Thursday, August 26, 2004.<sup>3</sup>

The Commission FINDS that:

a. Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1999 AC, R 460.17101 et seq.

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<sup>1</sup>See, Assoc of Data Processing Organization, Inc v Camp, 397 US 150, 90 S Ct 827, 25 L Ed 2d 184 (1970), where the court found that intervention was appropriate if the party could show an injury in fact and it was within the zone of the interest to be protected.

<sup>2</sup>The QFs that participated in the Circuit Court action include Cadillac, Genesee, Grayling, T.E.S., Viking-Lincoln, and Viking-McBain.

<sup>3</sup>By issuing this order, the Commission does not concede that the Ingham County Circuit Court has authority to stay proceedings pending before the Commission.

b. Cadillac, Genesee, Grayling, T.E.S., Viking-Lincoln, and Viking-McBain should be permitted to participate as intervenors in this proceeding.

c. A prehearing conference should be scheduled for 9:00 a.m. on Thursday, August 26, 2004.

THEREFORE, IT IS ORDERED that:

A. Cadillac Renewable Energy L.L.C., Genesee Power Station Limited Partnership, Grayling Generating Station Limited Partnership, T.E.S. Filer City Station Limited Partnership, Viking Energy of Lincoln, Inc., and Viking Energy of McBain, Inc., shall be permitted to participate as intervenors in this proceeding.

B. A prehearing conference shall be scheduled for 9:00 a.m. on Thursday, August 26, 2004.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

( S E A L )

/s/ J. Peter Lark  
Chair

By its action of August 18, 2004.

/s/ Robert B. Nelson  
Commissioner

/s/ Mary Jo Kunkle  
Its Executive Secretary

/s/ Laura Chappelle  
Commissioner

b. Cadillac, Genesee, Grayling, T.E.S., Viking-Lincoln, and Viking-McBain should be permitted to participate as intervenors in this proceeding.

c. A prehearing conference should be scheduled for 9:00 a.m. on Thursday, August 26, 2004.

THEREFORE, IT IS ORDERED that:

A. Cadillac Renewable Energy L.L.C., Genesee Power Station Limited Partnership, Grayling Generating Station Limited Partnership, T.E.S. Filer City Station Limited Partnership, Viking Energy of Lincoln, Inc., and Viking Energy of McBain, Inc., shall be permitted to participate as intervenors in this proceeding.

B. A prehearing conference shall be scheduled for 9:00 a.m. on Thursday, August 26, 2004.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

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Chair

By its action of August 18, 2004.

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Commissioner

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Its Executive Secretary

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Case No. U-14031

Suggested Minute:

“Adopt and issue order dated August 18, 2004 adopting a new schedule in this proceeding and permitting Cadillac Renewable Energy L.L.C., Genesee Power Station Limited Partnership, Grayling Generating Station Limited Partnership, T.E.S. Filer City Station Limited Partnership, Viking Energy of Lincoln, Inc., and Viking Energy of McBain, Inc., to participate as intervenors in this proceeding, as set forth in the order.”